

James P. Walsh, CSB. No. 184620  
 Gwen Fanger, CSB No. 191161  
 DAVIS WRIGHT TREMAINE LLP  
 505 Montgomery Street, Suite 800  
 San Francisco, California 94111-3611  
 Telephone: (415) 276-6500  
 Facsimile: (415) 276-6599  
 budwalsh@dwt.com

Attorneys for Defendants and Claimant  
 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and  
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,  
 Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka  
 CHRISTENE COHEN), *in personam* and,  
 F/V POINT LOMA, Official Number  
 515298, a 1968 steel-hulled, 126-gross ton,  
 70.8 foot long fishing vessel, her engines,  
 tackle, furniture apparel, etc., *in rem*, and  
 Does 1-10,  
 Defendants.

No. C-07-2952-WHA

**DECLARATION OF BARRY COHEN  
 IN SUPPORT OF DEFENDANTS'  
 MOTION FOR A PROTECTIVE  
 ORDER LIMITING THE  
 DEPOSITION OF CHRISTENE  
 COHEN PURSUANT TO FRCP 26(c)**

**Date: January 24, 2008**

**Time: 8:00 a.m.**

**Place: Courtroom 9, 19<sup>th</sup> Floor**

I, Barry A. Cohen, declare as follows:

1. I am a resident of the State of California and currently reside in Santa Maria, California. I am a named Defendant in this lawsuit. I make this declaration in support of Defendants' Motion for a Protective Order Limiting the Deposition of Christene Cohen Pursuant to FRCP 26(c). The facts set forth in this declaration are personally known to me to be true and, if called as a witness, I could and would testify to the following:

2. I married Chris Cohen on August 24, 1994. We are still married although we are separated and in the midst of divorce proceedings.

DAVIS WRIGHT TREMAINE LLP

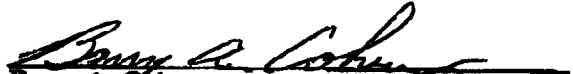
1 3. I will not waive any of my privileges with respect to any information sought from  
2 Christene Cohen by Plaintiff in this case, including, but not limited to, the marital communications  
3 privilege and attorney-client privilege. If questions are posed to her at deposition, I will instruct  
4 counsel to assert my privileges with respect to her testimony.

5 4. Both Joe Roggio and Joe Cappuccio admitted in their depositions I attended, that  
6 they have had no business dealings with Christene Cohen of any kind related to the issues in this  
7 lawsuit. Attached as Exhibits A and B, respectively, to my declaration are true and correct copies  
8 of excerpts of the draft transcripts from the depositions of Joe Roggio and Joe Cappuccio that  
9 were taken in this case.

10 5. I do not consider any issues relating to our divorce proceedings as relevant to the  
11 issues in this lawsuit. The POINT LOMA is owned by the F/V Point Loma Fishing Company,  
12 Inc., which has assumed the obligation to pay back any amounts that might be owed under the  
13 Promissory Note and has assumed the obligations under the First Preferred Mortgage. I  
14 understand and believe the fact that the vessel is owned by a separate corporation, and not by  
15 Chris and me personally, provides greater security to Del Mar Seafoods, Inc., not less. Moreover,  
16 I understand and believe it makes Chris and my personal finances completely irrelevant to this  
17 case and no basis whatever to foreclose the First Preferred Mortgage.

18 6. I therefore strongly support the Motion for A Protective Order.

19  
20 DATED this 18<sup>th</sup> day of December, 2007.

21   
22 Barry A. Cohen  
23  
24  
25  
26  
27

## Exhibit A

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 DISCLAIMER

2 The following is an unedited, uncertified draft  
3 transcript which may contain untranslated stenographic  
4 symbols, an occasional reporter's note, misspelled  
5 proper names, nonsensical word combinations, missing  
6 or partial words, and/or words in reversed word order.  
7 All such entries will be corrected on the final,  
8 certified transcript, which will be delivered to you in  
9 accordance with our standard delivery terms.

10 Because of the need to correct entries prior to  
11 certification, this draft is ONLY for the purpose of  
12 augmenting counsel's notes and not for use in any court,  
13 arbitration, or other formal proceeding or for  
14 distribution to any other party.

15 ---oOo---

16 MORNING SESSION 10:50 A.M.

17 JOSEPH ROGGIO,  
18 having been sworn as a witness by the  
19 Certified Shorthand Reporter,  
20 testified as follows:

21

22 EXAMINATION BY MR. WALSH

23

24 MR. WALSH: Q. Would you state your full name  
25 for the record, please, spelling it?

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 A. Joseph Roggio, J-o-s-e-p-h R-o-g-g-i-o.

2 (Deposition Exhibit 1 was marked for  
3 identification.)

4 MR. WALSH: Q. Mr. Roggio, I'm going to show  
5 you what we have marked as Deposition Exhibit 1, which  
6 is the notice of your deposition.

7 Have you seen this before?

8 A. Yes, I have.

9 Q. Okay. Did you bring any documents with you?

10 MR. POULOS: Go ahead.

11 THE WITNESS: I did not.

12 MR. POULOS: I'll break in here.

13 The documents that are responsive to that  
14 request for production that are in the possession,  
15 custody, and control of Del Mar have already been  
16 produced in the initial disclosures and in the  
17 additional production pursuant to the request for  
18 production of documents.

19 We believe that there are substantial  
20 additional documents that are in the possession,  
21 custody, and control of Mr. Cohen and his companies.

22 We have located a few additional documents  
23 through depositions that Mr. Cohen gave in the Point  
24 Avila Beach case that may be responsive and that have  
25 not been produced by Mr. Cohen, but could potentially

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 Q. Did you ever have any kind of conversation  
2 about these transactions with Chris Cohen?

3 A. Well, the joint venture agreement was between  
4 Barry and Joe, not Chris.

5 This had to do with what was left over after  
6 when we set down the joint venture operation.

7 MR. WALSH: Move to strike as nonresponsive.

8 Q. The question is, Did you ever have any  
9 conversation with Chris Cohen about any of these  
10 business dealings?

11 A. We weren't in a joint venture with  
12 Chris Cohen.

13 Q. So, the answer is no?

14 MR. POULOS: Just he's looking for a "yes" or  
15 "no."

16 THE WITNESS: No, I never talked to Chris  
17 about it.

18 MR. WALSH: Q. Do you know if Mr. Cappuccio  
19 ever talked to Chris about it?

20 A. You'll have to ask Mr. Cappuccio.

21 Q. The answer is, no, you don't know?

22 A. If you're asking me to assume if he talked to  
23 Chris, I would say no.

24 Q. Do you have any personal knowledge?

25 A. My personal knowledge would be no, but...

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 Q. You have nothing further to add?

2 A. Except for these amounts, again, were included  
3 in the profits and losses of the joint venture.

4 Q. As of October 2004; correct?

5 A. Correct.

6 Q. Okay. Did you ever send, in October or after  
7 October 2004, a notice in writing to Mr. Cohen that he  
8 owed these items and explain why he owed them?

9 A. I discussed them with Barry. And he said to  
10 add them to his balance.

11 Otherwise, I would have gone after the  
12 individuals who owed that money.

13 MR. WALSH: Move to strike as nonresponsive.

14 Q. Did you ever write a letter to Mr. Cohen  
15 outlining that these are the amounts that are owed to  
16 the joint venture?

17 A. No.

18 Q. Did you ever write a letter to Chris Cohen  
19 outlining that these were the amounts owed to the joint  
20 venture?

21 A. No.

22 MR. POULOS: I object that the question  
23 mischaracterizes the testimony.

24 He didn't testify that they were amounts owed  
25 to the JV.

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 Q. Did you have any conversation with Chris Cohen  
2 as to whether she was willing to have the note amended  
3 and have that amount added to the note?

4 A. No.

5 Q. The next item, "Point Loma Balance," what's  
6 that?

7 A. When Barry's boat started fishing for just  
8 Del Mar Seafoods, he was taking fuel, ice, and other  
9 advances. And when he was delivering fish, we were  
10 deducting those to his charges that he put on our  
11 accounts. And when he stopped fishing for us, that was  
12 the leftover balance.

13 Q. How about the "Fees for Olde Port Case"?

14 MR. POULOS: What about them?

15 MR. WALSH: Can you wait until I --

16 MR. POULOS: Sure.

17 MR. WALSH: Q. Why do they get added to this  
18 schedule?

19 A. Because they were discussed with Barry.  
20 And, again, he was taking responsibility for  
21 those fees that were incurred for his -- you'll have to  
22 ask him -- for his case with the Avila Beach Port --  
23 with the Port of Avila Beach.

24 Q. Who had the discussion with him about these  
25 fees?



ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 Did you give this to Barry?

2 A. Well, I know Barry -- at what point of this  
3 spreadsheet was it given to Barry? I don't know.

4 But Barry has definitely got this spreadsheet.

5 I mean, was it at, you know, this part of the  
6 spreadsheet? Was it at this part of the spreadsheet? I  
7 don't know.

8 Q. This particular document, do you recall ever  
9 giving it to Barry Cohen?

10 A. Yeah.

11 Q. When?

12 A. Oh, you're talking about with all of these  
13 items on it (indicating)?

14 Q. Yes, this particular one on it (indicating).

15 MR. POULOS: This one with the handwriting?

16 MR. WALSH: Q. Yes, the one with the  
17 handwriting on it.

18 A. Oh, no, not with the handwriting on it.

19 Q. Did you mail it to him with a cover letter?

20 A. No.

21 Q. Did you mail a copy of this to Chris Cohen  
22 with a cover letter?

23 A. No.

24 Q. Did you ever write a letter demanding that he  
25 make this payment?

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 A. Or 15 percent of the landing receipts,  
2 whichever one is greater.

3 Q. Right. And did you, at any time after the  
4 note was entered into, send Mr. Cohen a notification as  
5 to what might be due under the landing receipt  
6 provision?

7 A. No.

8 Q. But you could calculate that, couldn't you?

9 A. If he provided me with the proper records,  
10 yeah, I could.

11 Q. Correct. And when he delivered it to Del Mar,  
12 you knew what his landing receipts were, did you not?

13 A. Yes.

14 Q. But at no time did you ever send a letter  
15 saying, "we want you to pay a percentage of the landing  
16 receipts," did you?

17 A. No.

18 Q. Did you ever send a notice to him that he was  
19 late on a payment under the note?

20 A. No.

21 Q. Did you ever send him a notice that told him  
22 that interest was due? Did you send him a letter or a  
23 writing that interest was due?

24 A. No.

25 Q. I assume the answer would be the same with

ROUGH DFT 2007-12-13 Roggio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 respect to Christene Cohen as well.

2 A. Yes.

3 Q. So, tell me again the circumstances under  
4 which this \$175,000 payment was made.

5 Did you talk to Barry about why he made this  
6 payment? That's the first question: Did you talk to  
7 Barry about why he made this payment?

8 A. Did I talk to Barry?

9 Q. Yes.

10 A. I know we had talked about him making a  
11 payment or that a payment was coming.

12 Q. Tell me about those conversations.

13 A. He told me that he was going to get an equity  
14 line against his home and that he was going to pay off  
15 some bills and make a payment to -- and make a payment  
16 to Del Mar Seafoods.

17 MR. POULOS: Can we take a break? I need to  
18 use the restroom.

19 MR. WALSH: Sure.

20 (Recess taken: 2:36 p.m. until 2:47 p.m.)

21 (Deposition Exhibits 27 and 28 were  
22 marked for identification.)

23 MR. WALSH: Q. I'm going to show you two  
24 exhibits at once.

25 MR. POULOS: This is 27 and 28?

## **Exhibit B**

ROUGH DFT 2007-12-14 Cappuccio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

**1** **DISCLAIMER**

The following is an unedited, uncertified draft transcript which may contain untranslated stenographic symbols, an occasional reporter's note, misspelled proper names, nonsensical word combinations, missing or partial words, and/or words in reversed word order. All such entries will be corrected on the final, certified transcript, which will be delivered to you in accordance with our standard delivery terms.

10                   Because of the need to correct entries prior to  
11 certification, this draft is ONLY for the purpose of  
12 augmenting counsel's notes and not for use in any court,  
13 arbitration, or other formal proceeding or for  
14 distribution to any other party.

15 ---000---

16 FRIDAY, DECEMBER 14, 2007 11:02 A.M.

## 17 PROCEEDINGS

18 (Deposition Exhibits 29 and 30 were marked  
19 for identification.)

20 ---000---

21 JOSEPH FRANK CAPPUCCIO,  
22 having been sworn as a witness by the  
23 Certified Shorthand Reporter,  
24 testified as follows:

25 ---000---

ROUGH DFT 2007-12-14 Cappuccio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1

2

EXAMINATION BY MR. WALSH

3

4

MR. WALSH: Q. Could you state your full name  
for the record, please?

6

A. Joseph Frank Cappuccio.

7

Q. Would you spell "Cappuccio," please?

8

A. C-a-p-p-u-c-c-i-o.

9

Q. Mr. Cappuccio, my name is James Walsh, and  
I'm an attorney with the law firm of Davis Wright  
Tremaine. I represent the defendants in the lawsuit of  
Del Mar Seafoods versus Barry Cohen, et al.

13

This morning we're going to have a deposition  
of you with respect to the issues in that case.

15

What I would like to do at the outset is to  
simply go over some instructions about the conduct of  
the deposition so that you and I both have the same  
understanding of how we're going to do this.

19

First of all, I assume that you understand  
that the testimony -- because you have been sworn, the  
testimony you're giving here today is under oath and  
subject to penalties of perjury.

23

A. Yes.

24

Q. Okay. The next instruction is that it's good  
to answer "yes" or "no."

25

ROUGH DFT 2007-12-14 Cappuccio.txt

UNCERTIFIED, ROUGH-DRAFT TRANSCRIPT

1 into bankruptcy.

2 Then his wife called the office. They were  
3 going through a real nasty divorce. And she accused him  
4 of beating her.

5 So, I went at, "Uh-oh. This is getting ugly."

6 And that made me say, "We better secure the  
7 asset."

8 And at that point, we advised their (sic)  
9 attorney what our options were.

10 We never advised him what to do. We asked him  
11 what to do.

12 Q. So, it was the call from your attorney and you  
13 said you got a call from Chris Cohen.

14 A. The office did. I didn't personally receive  
15 the call from Chris Cohen.

16 Q. Who received the call from Chris Cohen?

17 A. I'm not exactly sure.

18 Q. During the period of time that we're talking  
19 about from 1999 to 2006, did you ever have any business  
20 dealings with Chris Cohen yourself?

21 A. No, uh-uh.

22 Q. So, it was the lawsuit having to do with legal  
23 fees; correct?

24 A. It was Barry's admission that he might be  
25 forced to declare bankruptcy if the Court were not to